

## **SUNSHINE REFORM TASK FORCE MEETING MINUTES**

**Thursday, February 7, 2008  
6:00pm – 8:30pm**

**City Hall, Wing Rooms 118-119**

**Present:** Ed Rast, Strong Neighborhoods Initiative PAC; Ken Podgorsek, United Neighborhoods of SCC; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Bert Robinson, San José Mercury News; Brenda Otey, At Large-Representative; Virginia Holtz, Willow Glen Neighborhood Assoc.; Mary Ann Ruiz, Parks and Recreation Commission; Trixie Johnson, Former Councilmember; Bob Brownstein, South Bay Labor Council; Nanci Williams, San José/Silicon Valley Chamber of Commerce; Dan Pulcrano, Silicon Valley Leadership Group; Edward Davis, Orrick Law Firm (Legal Counsel to the Task Force);

**Absent:** Bobbie Fishler, League of Women Voters; Dave Zenker, Falls Creek Neighborhood Association

**Staff:** Lee Price, City Clerk; Lisa Herrick, Senior Deputy City Attorney; Tom Manheim, Office of the City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency; Eileen Beaudry, Office of the City Manager; Dottie Disher, City Clerk; Tom Norris, Office of the City Manager; Troy Gavin, Office of the City Manager; Alex Gurza, Director of Employee Relations; Rick Doyle, City Attorney.

### **I. Comments from the Chair**

Ed Rast commented that the Task Force's Phase I Recommendations continue to be reviewed at Rules and Open Government Committee and that he generally agrees with the changes they are making, and estimated completion in April, to be followed by Council review. He also noted that the TF finished reviewing recommendations from the Administration and Accountability Subcommittee, and that Technology Subcommittee work will be coming back to the Task Force.

### **II. Review of Meeting Material**

Tom Manheim reviewed the meeting materials and discussed the Task Force workplan. He reviewed a meeting schedule based on the Task Force's current workload, showing the Task Force meeting through March, no meetings in April, and with a final meeting in May to review a draft of the Task Force's Phase II Final Report and Recommendations.

### **III. Discuss and Approve Public Records Subcommittee Recommendations**

#### **A. The Balancing Test**

Bert Robinson described the Balancing Test and reviewed documents A4 and A5 in the meeting packet. Document A4 contains proposed language eliminating the Balancing Test and identifying four categories of information that could be withheld instead; it specifically does not include exemption for the reason of deliberative process.

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Document A5 contains proposed language modifying the Balancing Test and requiring written justification for its use by the City Attorney. Mr. Robinson then opened the meeting to Public Testimony.

Public Comment: Bob Livengood, Milpitas City Councilmember, advised the SRTF that Milpitas does not have a Balancing Test in its Sunshine Ordinance and that it has not posed a problem. James Chadwick, Legal Counsel for the Mercury News urged the Task Force to adopt document A4. Daniel Finn, City Labor Alliance (CLA), thanked the Public Records Subcommittee for allowing input from the CLA. Terry Francke, Californians Aware, noted he would provide additional follow up to the Task Force in writing, but remarked that Section 6255 of the California Public Records Act (CPRA) is too broad. Peter Scheer of California First Amendment Coalition, noted that 6255 is the most abused part of the CPRA.

The Task Force discussed the Balancing Test extensively focusing on the possibility of fine-tuning the exemptions listed in document A4 and the potential over-use of the Balancing Test as described in document A5.

Alex Gurza expressed a concern that potential disclosure of certain records could produce a chilling effect on future whistle-blowers. Rick Doyle expressed a concern that the proposed language in A4 could have a chilling affect on the creation of new ideas, if the deliberative process were subject to public disclosure. He also stated that the language in document A5 was acceptable to the City Attorney's Office.

Upon a motion by Bert Robinson, seconded by Bob Brownstein, the Task Force agreed to amend document A4 to include in paragraph B3: "Serious economic harm." Motion passed 9:2 (Rivas-Cosby, Pulcrano opposed.)

Upon a motion by Bert Robinson, seconded by Dan Pulcrano, the Task Force adopted the proposed language in document A4, as amended to add language requiring the identification of the exemption being invoked and the reasons for the exemption. Motion passed 6:5 (Holz, Otey, Johnson, Brownstein, Rivas-Cosby opposed).

The Task Force also agreed to refer back to the subcommittee the matter of withholding personnel records in relation to the disciplinary exemption/records.

## **B. Drafts and Memoranda**

Public Comment: James Chadwick proposed an amendment to the first sentence of Section 5.1.2.020, as follows: "Once a proposal, initiative or other contemplated or suggested action is made public, or presented for action by any City body, agency or official, all related preliminary drafts, notes..."

Upon a motion by Bert Robinson, seconded by Virginia Holz, the Task Force unanimously agreed to accept the language in 5.1.2.020 (Drafts and Memoranda), as

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amended by revising the first sentence to read as follows: “Once a proposal, initiative or other contemplated or suggested action is made public, or presented for action by any City body, agency or official, all related preliminary drafts, notes or memoranda, whether imprinted or electronic form, will be subject to disclosure if they have been retained as of the time the request is made.”. Motion passed 10:1 (Otey abstained).

#### **IV. Task Force Workplan – Reviewed above in item II.**

#### **V. Open Forum - No additional Public Testimony was received.**

**The Task Force adjourned at 8:34p.m.**